

THE HONOURABLE SRI JUSTICE A.GOPAL REDDY
Criminal Petition No.5345 of 2003

10.12.2004

Mohammed Gouse Pasha (A1)

1. Tummala Venkata Krishna Rao.
2. The State of A.P. rep., by P.P., High Court, Hyderabad

Counsel for the petitioner: Sri T. Pradyumna Kumar Reddy

Counsel for the Respondent No.1: Sri O. Manohar Reddy
Counsel for the Respondent No.2: Public Prosecutor.

:ORDER:

Petitioner, who is A1 in C.C.No.1184 of 2002 on the file of the VI Metropolitan Magistrate, Vijayawada and who along with three others is alleged to have committed the offence punishable under Sections 120-B, 420, 468 & 471 read with Section 34 IPC, filed this petition seeking to quash the proceedings in the said C.C.No.1184 of 2002.

2. The brief facts of the case are as follows:

Initially C.C.No.546 of 2000 i.e., a private complaint and C.C.No.706 of 2001 i.e., a police case on the file of the III Metropolitan Magistrate, Vijayawada were transferred to the VI Metropolitan Magistrate, Vijayawada as per the orders passed by the Metropolitan Sessions Judge, Vijayawada and on such transfer, they were renumbered as C.C.No.1184 of 2002 and C.C.No.1183 of 2002 respectively. Originally, the III Metropolitan Magistrate, Vijayawada clubbed both the cases under Section 210(2) Cr.P.C as the subject matter, the accused and the complainant are one and the same. By the time of transfer of the said cases to the VI Metropolitan Magistrate, since the accused NO.2 was in judicial custody as under trial prisoner, he made a representation that he was unable to engage counsel to represent his case. A Counsel was engaged as Legal Aid on behalf of A2 in both the matters. As A1 and A3 in C.C.No.1183 of 2002 and A1 & A4 in C.C.No.1184 of 2002 were not coming forward to dispose of the cases, the cases against A2 are split up and renumbered as C.C.No.7 of 2003 and C.C.No.8 of 2003 and disposed of on 30.1.2003 whereby A2 was convicted. After disposal of cases against A2, the petitioner/A1 filed a petition under Section 311 Cr.P.C. before the VI Metropolitan Magistrate, Vijayawada for further cross-examination of the complainant in both the cases as the complainant is one and the same in the police case as well as private complaint and the same was dismissed and confirmed by the Sessions Judge in appeal and later, the petitioner preferred a revision before this Court in Criminal R.C.No.107 of 2003 and the same was allowed by this Court on 29.1.2003. As per the directions issued in the said Criminal Revision, the witnesses were cross-examined and the matter was posted for arguments. At that stage, the petitioner filed the present criminal petition and obtained stay of further proceedings, on 17.11.2003. Thereafter, the matter went on several adjournments.

3. It is argued by the learned Counsel for the petitioner that on the report given by R1, Crime No.556 of 1998 was registered for the offence punishable under Sections 120B, 420, 468, 471 read with Section

34 IPC. When the investigation was in progress, the 1st respondent filed a private complaint on 7.4.2000 on the file of the III Metropolitan Magistrate, Vijayawada, in which statements of four witnesses were recorded and after recording the statements of four witnesses, the learned Magistrate took cognizance of the same against A1 to A4 in C.C.No.546 of 2000. He further contends that the Police after investigation into the Crime No.556 of 1998 filed a charge sheet and the same was taken cognizance on 29.10.2001 in C.C.No.706 of 2001. Since the Magistrate did not follow the procedure as contemplated under the Criminal Procedure Code, did not frame a charge in the private complaint and did not follow the procedure under section 313 Cr.P.C, the proceedings are liable to be quashed.

4. From the facts stated above, it is obvious that there has been only one incident for which C.C.No.546 of 2000 i.e., a private complaint and C.C.No.706 of 2001 i.e., a police case (renumbered as C.C.1184 of 2002 and C.C.No.1183 of 2002 respectively) were taken on file. Since the complainant and the accused are one and the same, trying of such two cases together cannot be denied.

5. This Court in Criminal Petition No.1868 of 2003 in an identical situation held that directing the cases to be clubbed may not be appropriate since clubbing of cases is alien to the criminal trial and instead the order should have been passed to the effect that both the cases should be tried together. On perusal of provision to section 210 Cr.P.C., this Court further held that when there is a private complaint case and also a police case in respect of an incident, the Magistrate shall stay the proceedings in the private complaint case and call for the report of the police in the police case. If such a report has been filed by the police and cognizance has been taken thereon by the Magistrate against any person who is also an accused in the private complaint case, the Magistrate shall enquire into and try together the private complaint case as well as the police report case, as if both the cases were instituted on a police report. If for any reason, the police case does not relate to any accused in the private complaint case, he shall proceed with the enquiry or trial in the private complaint case in accordance with the provisions of the Code.

6. In the above case, the complaint case is in respect of an accused, who is not an accused in the police report. In view of the law declared by the Apex Court, in Harjinder Singh V. State of Punjab¹, this Court in the above Criminal Petition No.1868 of 2003, set aside the impugned order directing both the cases shall have to be clubbed and tried together and evidence shall be recorded in Sessions Case. In the case on hand, the petitioner is accused in both the cases i.e., in police case and private complaint.

7. (i) This Court in Tella Zedson V. Chaganti Kista Rao² held that "The Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report in the offence taken cognizance against any person who is an accused in the complaint case."

The above decision is squarely applicable to the present case on hand since the offence is one and the same in both the cases and the accused in the charge sheet filed are arrayed as accused in the complaint case also and it is necessary that both the cases have to be tried and disposed of together and this would avoid duplicity of the trial, harassment of the accused and the prolongation.

(ii) In Chinnu Naicken V. Rangasami³ the Madras High Court held that "It is permissible to hold a joint trial of the accused named in the police report and the accused named in the private complaint, amalgamating the two even though the accused in the police report may not all be the same as those in the complaint. It is better for the purpose of a proper appraisal if the two cases are clubbed together as the persons accused are involved in the same offence arising in the course of the same transaction. The

foundation for the charge is one and the same and it is only just that there should be one trial. Section 210 Cr.P.C. is a procedure beneficial to the accused as there need not be two separate trials of the same offence".

Accordingly, the Madras High Court upheld the order passed by the Additional Sessions Judge in making an order consolidating the two cases to try the accused at one trial as there is no prejudice caused to the accused. Similar view was taken by the Kerala High Court in Joseph V. Joseph and others⁴.

(iii) The Apex Court in Manikandan Vs. Pandian⁵ after following the principles laid down in Harijinder Singh (1 supra) held that "Two cases cannot be consolidated and tried together though the case instituted on private complaint is in respect of the same offence, for which the charge sheet has been filed against the first accused. The entire evidence in the case may not be the same. It may, therefore, be proper to record the evidence separately in both the cases unless the witnesses are common."

8. In the present case, all the witnesses are common and the complainant and the accused are one and the same in both the cases. Apart from the same, the petitioner filed the application under Section 311 Cr.P.C. for cross-examination of the complainant in both the cases and as per the directions of this Court in revision the witnesses were also cross-examined.

9. In view of the foregoing discussion, the arguments that were urged by the learned Counsel for the petitioner that the Magistrate acted contrary to the provisions under section 210 Cr.P.C cannot be countenanced and the criminal petition is liable to be dismissed.

Accordingly, the Criminal Petition is dismissed.

1 AIR 1985 SC 404.

2 1990(2) ALT 674

3 1983 Cr.L.J.494

4 1982 Cr.L.J. 595

5 1989 Supp (2) SCC 648